

§ 402.70 Reasons for withholding some records.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. We describe these exemptions in §§ 402.75 through 402.110 of this part and explain how we apply them to disclosure determinations. (In some cases more than one exemption may apply to the same document.) Information obtained by the agency from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed, to the extent it can be withheld under one of these exemptions. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the agency.

§ 402.75 Exemption one for withholding records: National defense and foreign policy.

We are not required to release records that, as provided by FOIA, are “(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order.” Executive Order No. 12958 (1995) (3 CFR, 1987 Comp., p. 235) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may on occasion have in our possession records classified by some other agency. We may refer your request for such records to the agency that classified them and notify you that we have done so.

§ 402.80 Exemption two for withholding records: Internal personnel rules and practices.

We are not required to release records that are “related solely to the internal personnel rules and practices of an agency.” Under this exemption, we may withhold routine internal agency practices and procedures. For example, we may withhold guard schedules and rules governing parking facilities or lunch periods. Also under

this exemption, we may withhold internal records whose release would help some persons circumvent the law or agency regulations. For example, we ordinarily do not disclose manuals that instruct our investigators or auditors how to investigate possible violations of law, to the extent that this release would help some persons circumvent the law.

§ 402.85 Exemption three for withholding records: Records exempted by other statutes.

We are not required to release records if another statute specifically allows or requires us to withhold them. We may use another statute to justify withholding only if it absolutely prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld. We often use this exemption to withhold information regarding a worker’s earnings which is tax return information under section 6103 of the Internal Revenue Code.

§ 402.90 Exemption four for withholding records: Trade secrets and confidential commercial or financial information.

We will withhold trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.

(a) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

(b) *Commercial or financial information.* We will not disclose records whose information is “commercial or financial,” is obtained from a person, and is “privileged or confidential.”

(1) Information is “commercial or financial” if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances). We interpret this category broadly.

(2) Information is “obtained from a person” if SSA or another agency has obtained it from someone outside the